IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3084 OF 2006

Balkrishen Ruplal Mehra .. Petitioner
V/s
Union of India & Ors. .. Respondents

Mr.Madhur R.Baya for the Petitioner.
Mr.A.S.Rao for the Respondents.

CORAM : DR.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATE : 17th January, 2007.

P.C.:

1. Heard the learned Counsel for the parties. Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent taken up for hearing.

2. By this petition, the Petitioner is challenging the order dated 19.9.2006 whereby the CESTAT has declined to entertain the application for rectification of mistakes with regard to the earlier order of 9.12.2005. The Tribunal by its order dated 9.12.2005 had merely remanded the matter back with the consent of both the parties. It is submitted by the learned Counsel for the Petitioner that there was no dispute with regard to the order of remanding the matter back, but the only contention of Petitioner is that that there was no consent of the Petitioner for the said remand. So far as the Tribunal is concerned, the Tribunal has rightly observed in its order dated 19.9.2006 that it was unable to recollect after a gap of about nine months as to whether the Petitioner had really consented to or not and in the circumstances rejected the rectification application.

2. There is no dispute now that the matter is remanded back for fresh hearing. But the only contention of the learned Counsel for the Petitioner is that the Tribunal in its order dated 9.12.2005 while remanding the matter back should not have recorded that the said remand was with consent of the Petitioner. Having regard to the facts and circumstances of the case, as the matter is remanded back and that no prejudice would be caused to the Respondents, we make it clear that there was no consent of the Petitioner though the matter was remanded back.

3. We also make it clear that the Commissioner shall decide the matter strictly on its own merits and in accordance with law.

4. Writ Petition stands disposed of accordingly.

(J.P.DEVADHAR, J.) **(DR.S.RADHAKRISHNAN,J.)**